

*American Zurich Ins. Co. and Zurich American Ins. Co. v.
J. Crisman Palmer and GPNA*

*Paris Glazer
October 5, 2022*

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EXHIBIT

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<p>1 goofy how this was pled because the contracts at issue</p> <p>2 were only between certain Zurich entities, and it was</p> <p>3 just odd that that hadn't gotten fettered out earlier</p> <p>4 as to what Zurich entities were actually involved in</p> <p>5 this from a contractual perspective.</p> <p>6 Q Let me ask you this: Based upon your work in defending</p> <p>7 the case for two years, did you believe that at</p> <p>8 least -- well, I'll withdraw the question and reask it</p> <p>9 differently.</p> <p>10 Would you agree with me that one of the</p> <p>11 defendants, at least one, was a proper party defendant</p> <p>12 in this bad faith case?</p> <p>13 A I believe so, yes. I just can't remember which of</p> <p>14 them. And I think that there were other answers or</p> <p>15 discovery responses that I did in which I said, you</p> <p>16 know, I'm answering on behalf of whatever we thought</p> <p>17 the proper defendant was, but to the extent, you know,</p> <p>18 answers are needed on behalf of these other defendants,</p> <p>19 you can deem them to be on behalf of them as well.</p> <p>20 Q Did you have any information during your time defending</p> <p>21 Zurich that that proper party defendant did not have</p> <p>22 the resources to pay whatever judgment was levied</p> <p>23 against it?</p> <p>24 A I don't remember ever being concerned about that.</p> <p>25 Q So as a practical matter, although the judgment may</p>	<p>1 identified were applicable in this case, correct?</p> <p>2 A That is correct.</p> <p>3 Q Will you please look at Exhibit --</p> <p>4 A Can I amend that for one second? I would say that is</p> <p>5 correct except, you know, in discovery, as you pointed</p> <p>6 out, there was a -- there was an ongoing dispute, and</p> <p>7 depending on how high up in the chain of command or</p> <p>8 whatever Abourezk was trying to seek depositions from</p> <p>9 people, I think the issue of, you know, what Zurich</p> <p>10 entities were proper parties would have mattered.</p> <p>11 Depending on, you know, if Abourezk wanted to get a</p> <p>12 sea-level deposition from somebody at an entity that</p> <p>13 wasn't even supposed to be involved in this case, I</p> <p>14 think that would have been an issue.</p> <p>15 Q Do you recall that ever being a specific issue here?</p> <p>16 A I can't recall. But I remember apex discovery being a</p> <p>17 specific issue here.</p> <p>18 Q What do you mean by "apex discovery"?</p> <p>19 A Abourezk wanting to get higher-level depositions from</p> <p>20 people higher up in the chain of command at Zurich in a</p> <p>21 manner that I thought was, you know, harassing and,</p> <p>22 you know, unnecessary. But, you know, he was very</p> <p>23 interested in getting, you know, information about</p> <p>24 different people who were very far removed from the</p> <p>25 primary claims handling responsibility for this claim.</p>
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<p>1 have been against three entities versus one, when it</p> <p>2 comes back to the check being written, does the</p> <p>3 existence of an improper -- or additionally pled</p> <p>4 plaintiffs make any difference?</p> <p>5 MR. HOYT: Objection. Calls for legal conclusion,</p> <p>6 incomplete, calls for speculation.</p> <p>7 THE WITNESS: Yeah. So subject to that objection,</p> <p>8 as I sit here today, I can't remember exactly what</p> <p>9 significance there was. But I will say, as a general</p> <p>10 matter, you know, when you have different affiliates</p> <p>11 within an insurance company family, it can be important</p> <p>12 to keep the affiliates separate in terms of discovery</p> <p>13 issues and in terms of -- you know, if you had, like,</p> <p>14 regulatory issues in terms of some -- an affiliate who</p> <p>15 shouldn't be involved now having to report that it was</p> <p>16 involved in a bad faith case even though it wasn't, you</p> <p>17 know, involved with that, then, you know, with</p> <p>18 different insurance companies buying and selling</p> <p>19 different affiliates and divisions and such, you know,</p> <p>20 it's -- it's not some pedantic thing. I can't remember</p> <p>21 what the significance of it is to this case. But, you</p> <p>22 know, it's something I think is important.</p> <p>23 BY MR. SUTTON:</p> <p>24 Q And as you sit here today, you don't recall one way or</p> <p>25 the other whether any of those concerns that you just</p>	<p>1 Q As you sit here, do you have any knowledge that the</p> <p>2 identification of Zurich North America as a defendant,</p> <p>3 being a trade name, had any impact on whether those</p> <p>4 depositions were going to proceed or not?</p> <p>5 A I can't say one way or the other specific to that.</p> <p>6 Q What you do know, though, is that Attorney Abourezk</p> <p>7 was -- and the courts in South Dakota were giving him</p> <p>8 very broad scope of discovery in this case, weren't</p> <p>9 they?</p> <p>10 MR. HOYT: Objection. That assumes facts not</p> <p>11 established. Lack of foundation.</p> <p>12 THE WITNESS: I would say that in this case,</p> <p>13 subject to that objection, the scope of discovery</p> <p>14 seemed very broad, to me, that he was being allowed to</p> <p>15 pursue.</p> <p>16 BY MR. SUTTON:</p> <p>17 Q And you were the primary lawyer within the Hinshaw firm</p> <p>18 that was responsible for responding to the written</p> <p>19 discovery, weren't you?</p> <p>20 A Yeah. I mean, I had some help from, like, a junior</p> <p>21 associate, but when it came down to, you know, issuing</p> <p>22 the answers and, you know, working with Abourezk to</p> <p>23 have meet-and-confers, and I did this whole sort of</p> <p>24 alternative meet-and-confer thing, yeah, you know, I</p> <p>25 was primary.</p>

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<p>1 A Yep.</p> <p>2 Q There is an entry, August 30, 2018, for you in the</p> <p>3 amount -- or for 2.6 hours, which says, quote,</p> <p>4 "Research alternative local counsel in South Dakota</p> <p>5 using Lex Machina and PACER (researched approximately</p> <p>6 17 firms, approximately 45 pages)."</p> <p>7 Did I read that entry correctly?</p> <p>8 A Correct.</p> <p>9 Q What is Lex Machina?</p> <p>10 A It was, like, a LexisNexis product that's available</p> <p>11 that allows you to, like, look up cases by, like, law</p> <p>12 firm, and you can, like, look at judges, and it</p> <p>13 purports to give you, like, a breakdown of, you know,</p> <p>14 what percentage of their cases are employment law cases</p> <p>15 versus what percentage of their cases are construction</p> <p>16 law or insurance law.</p> <p>17 Q And I assume you have no personal knowledge about the</p> <p>18 validity of any of that information as it relates to</p> <p>19 South Dakota law firms.</p> <p>20 A Correct.</p> <p>21 MR. HOYT: Can we take a short break, Jason?</p> <p>22 MR. SUTTON: Yeah. If you give me two minutes,</p> <p>23 I'll be done with this exhibit, and then I don't have</p> <p>24 to remember where I stopped, if that's okay.</p> <p>25 MR. HOYT: Sounds good. That's fine.</p>	<p>1 MR. SUTTON: Now is the perfect time for a break.</p> <p>2 MR. HOYT: Just five minutes is fine for me,</p> <p>3 unless you want to take more.</p> <p>4 MR. SUTTON: No. I'm -- unless Audrey or Paris</p> <p>5 needs more -- we're off the record.</p> <p>6 (Recess taken from 12:50 p.m. to 12:58 p.m.)</p> <p>7 BY MR. SUTTON:</p> <p>8 Q Okay. Paris, we're back on the record. Will you</p> <p>9 please look at <u>Exhibit 62</u>.</p> <p>10 A I'm looking at <u>Exhibit 62</u>, which says it's a report and</p> <p>11 a recommendation regarding defendants' motion to</p> <p>12 dismiss.</p> <p>13 Q And you've reviewed this document previously, although</p> <p>14 maybe not in preparation for your deposition; is that</p> <p>15 right?</p> <p>16 A Yeah, I reviewed this document in the course of my</p> <p>17 representation of Zurich in this case, but I don't</p> <p>18 believe I looked at this in preparation for my</p> <p>19 deposition today.</p> <p>20 Q And do you understand that this is the report and</p> <p>21 recommendation issued by Magistrate Judge Wollmann</p> <p>22 denying the motion to dismiss based on failure to</p> <p>23 exhaust?</p> <p>24 A I believe so, yes.</p> <p>25 Q And will you please turn to page 9 of <u>Exhibit 62</u>.</p>
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<p>1 BY MR. SUTTON:</p> <p>2 Q Do you, Paris, recall what, in August of 2018, caused</p> <p>3 you to start researching alternative local counsel?</p> <p>4 A I believe at some point around that time there had been</p> <p>5 a discussion with Dawn about potentially getting</p> <p>6 somebody else involved besides the Gunderson Palmer</p> <p>7 firm, but I can't really remember the specifics of it.</p> <p>8 But, you know, I know that I started looking into</p> <p>9 different firms around the time that that discussion</p> <p>10 had happened with Dawn.</p> <p>11 Q And at least as part of your entry in your time sheet,</p> <p>12 there were 17 law firms in the state that you reviewed</p> <p>13 information based on; is that right?</p> <p>14 A Yeah, or 17 hits came up and then they had, you know,</p> <p>15 varying amounts of information for each one.</p> <p>16 Q Do you know why the decision was made not to remove</p> <p>17 Gunderson Palmer as local counsel at that time?</p> <p>18 A No.</p> <p>19 Q Whose decision was that?</p> <p>20 A I think that would have been Dawn's decision. It</p> <p>21 certainly wasn't my decision.</p> <p>22 Q Did you make any recommendations, that you recall?</p> <p>23 A I think I made -- I provided -- I remember providing</p> <p>24 Dawn some potential names for new firms, if that's what</p> <p>25 they were interested in.</p>	<p>1 Looking at the last sentence of the paragraph</p> <p>2 above the little ii, did Judge -- Magistrate Judge</p> <p>3 Wollmann write, quote, "Therefore, the 2013 Settlement</p> <p>4 Agreement constituted the final stages of the</p> <p>5 administrative process, as such, Leichtnam exhausted</p> <p>6 his administrative remedies and this court has proper</p> <p>7 jurisdiction"?</p> <p>8 Is that what she wrote?</p> <p>9 A That's what appears in the order, so that would have</p> <p>10 been, yeah, what she wrote or her clerk and she</p> <p>11 approved it.</p> <p>12 Q Will you please turn to page 13 of <u>Exhibit 62</u>.</p> <p>13 A I'm there.</p> <p>14 Q On the Notice to Parties, there's an indication that</p> <p>15 either party can file objections to the report and</p> <p>16 recommendation issued by Magistrate Judge Wollmann; is</p> <p>17 that right?</p> <p>18 A That's right.</p> <p>19 Q And did you understand that if objections were filed,</p> <p>20 because this was a legal issue, the District Court</p> <p>21 Judge Viken would review the issue de novo?</p> <p>22 A I can't remember what the standard of review by the</p> <p>23 district judge was for this. Oh, but I guess I'm</p> <p>24 reading it right here. It says "Objections must be</p> <p>25 timely and specific in order to require de novo review</p>

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<p style="text-align: right;">Page 57</p> <p>1 by the District Court."</p> <p>2 So now that I'm reading that, yes.</p> <p>3 Q You beat me to my next question.</p> <p>4 Do you recall that Zurich did, in fact, file</p> <p>5 objections to this report and recommendation?</p> <p>6 A I can't actually remember whether we did, but --</p> <p>7 Q Look at <u>Exhibit 50</u>.</p> <p>8 A <u>Exhibit 50</u>. Yep.</p> <p>9 Q On <u>Exhibit 50</u>, if you look at -- actually, we have to</p> <p>10 start by looking at 62 and then refer to 50.</p> <p>11 So in 62, what is the docket number at the top of</p> <p>12 that --</p> <p>13 A Document 120.</p> <p>14 Q Okay. So then if you look at <u>Exhibit 50</u>, on Docket</p> <p>15 Entry Number 126 on page 14 --</p> <p>16 A I see that, yep. 9-26, "Objection to Report and</p> <p>17 Recommendation by American Zurich Insurance Company,"</p> <p>18 filed 9-26-2019.</p> <p>19 Q And look at, from Docket Number 126 through 144, which</p> <p>20 is ultimately the dismissal of the case after the</p> <p>21 judgment, I want you to confirm for me that the</p> <p>22 district court never ruled on that objection to the</p> <p>23 report and recommendation before the case was settled.</p> <p>24 A I mean, it's a little hard for me to quickly read all</p> <p>25 this, but I don't remember a ruling on the objections;</p>	<p style="text-align: right;">Page 59</p> <p>1 THE WITNESS: I have <u>Exhibit 107</u> in front of me,</p> <p>2 Jason.</p> <p>3 BY MR. SUTTON:</p> <p>4 Q Thank you, Paris. I was trying to -- I'm juggling too</p> <p>5 much paper.</p> <p>6 On <u>Exhibit 107</u>, will you please turn to Zurich</p> <p>7 4718. And --</p> <p>8 A Yep.</p> <p>9 Q -- there's a timekeeper entry for Joshua Vincent on</p> <p>10 September 6, 2019. Do you see that entry?</p> <p>11 A Yes.</p> <p>12 Q Can you tell me who Mr. Vincent is?</p> <p>13 A Yeah. He is a very experienced appellate court</p> <p>14 attorney in our firm.</p> <p>15 Q As part of your defense of Zurich in the bad faith</p> <p>16 case, I'm gathering you consulted with Mr. Vincent to</p> <p>17 evaluate potential appellate issues. Is that right?</p> <p>18 A Yeah. I can't remember specifically, but, I mean, I'm</p> <p>19 seeing his name right here, and that -- that certainly</p> <p>20 would be consistent with my practice, to reach out to</p> <p>21 Josh about questions like that.</p> <p>22 Q Do you recall -- or does the review of <u>Exhibit 107</u></p> <p>23 refresh your recollection of whether there was</p> <p>24 discussion with -- amongst your defense team about</p> <p>25 whether to seek a interlocutory appeal of</p>
<p style="text-align: right;">Page 58</p> <p>1 and if there was one, I assume it would be -- that</p> <p>2 would appear on this docket, which is marked as</p> <p>3 <u>Exhibit 50</u>.</p> <p>4 Q And I'd represent to you, Paris, I mean, it didn't</p> <p>5 happen. So it was still pending at the time that the</p> <p>6 Leichtnam bad faith case was settled.</p> <p>7 Do you recall forming any opinions regarding your</p> <p>8 belief of the likelihood of success that Judge Viken</p> <p>9 would overrule the report and recommendations denying</p> <p>10 the motion to dismiss?</p> <p>11 A I don't remember forming any opinions on that</p> <p>12 likelihood.</p> <p>13 Q Did you ever have any -- do you recall having any</p> <p>14 discussions with Dawn Wagner at Zurich about whether</p> <p>15 Zurich should wait for Judge Viken to rule on those</p> <p>16 objections before settling the case?</p> <p>17 A I don't remember one way or the other.</p> <p>18 Q Will you please look at <u>Exhibit 107</u>. That was in the</p> <p>19 group sent yesterday.</p> <p>20 A <u>Exhibit 107</u>. Give me a minute.</p> <p>21 Q Yep.</p> <p>22 MS. MONDSCHNEAN: That was yesterday --</p> <p>23 THE WITNESS: Yes.</p> <p>24 MS. MONDSCHNEAN: Yesterday's, Jason?</p> <p>25 MR. SUTTON: Yes. Correct.</p>	<p style="text-align: right;">Page 60</p> <p>1 Judge Wollmann's decisions?</p> <p>2 A I just can't remember one way or the other, you know,</p> <p>3 what we discussed or didn't discuss in that regard. I</p> <p>4 mean, it would be probably a reasonable thing to</p> <p>5 discuss, but I just can't remember, you know, any</p> <p>6 specifics of it.</p> <p>7 Q Now, the motion to dismiss that was denied by</p> <p>8 Magistrate Judge Wollmann, we've talked that there was</p> <p>9 an appeal -- or objections to that report and</p> <p>10 recommendation that were pending as part of the</p> <p>11 settlement, but I want to talk through with you some</p> <p>12 other avenues that may have existed for further review</p> <p>13 of that decision.</p> <p>14 Based upon your work in handling other cases, do</p> <p>15 you agree that if Zurich would have gone to trial and</p> <p>16 it was not successful at trial, that it could have</p> <p>17 appealed Judge Viken's decision on the motion to</p> <p>18 dismiss and the objections to the Eighth Circuit?</p> <p>19 A Like, appeal as a matter of right after a final</p> <p>20 decision, yes.</p> <p>21 Q Say it again, please, Paris.</p> <p>22 A Sorry. Appeal as a matter of right after a final</p> <p>23 decision, yes.</p> <p>24 Q Additionally, do you understand that there are</p> <p>25 mechanisms that exist in the law that may allow for a</p>

<p style="text-align: right;">Page 81</p> <p>1 don't have the exhibit number off the top of my head.</p> <p>2 But, yeah, there was a -- you know, a balance and</p> <p>3 a tension in this case with the fact that, you know,</p> <p>4 there was this body of case law in South Dakota that</p> <p>5 Abourezk was relying on to demand just extremely broad</p> <p>6 discovery from Zurich, and his discovery requests were</p> <p>7 very hard to comply with for a number of reasons. And</p> <p>8 so you had to sort of negotiate with him and be mindful</p> <p>9 of his attitudes when you were propounding discovery to</p> <p>10 him, because if you pushed in an uncomfortable manner,</p> <p>11 then he might push back even harder on you.</p> <p>12 Q From what you saw in the file, had there been any</p> <p>13 attempt whatsoever by Palmer to get documents before --</p> <p>14 either before Abourezk moved for documents or made</p> <p>15 motions?</p> <p>16 A I don't remember -- well, I do remember I issued</p> <p>17 written discovery to Abourezk, and I think those were</p> <p>18 the first sets that had gone to him, I mean, beyond</p> <p>19 what you would -- one would produce as an initial</p> <p>20 disclosure in the, you know, the -- what is it, Rule 26</p> <p>21 initial disclosures in federal court?</p> <p>22 Q Did you see any effort to notice the plaintiff's</p> <p>23 deposition before Mr. Abourezk started making motions</p> <p>24 to compel?</p> <p>25 A I can't remember one way or the other.</p>	<p style="text-align: right;">Page 83</p> <p>1 Q Would it be significant in a jury trial if more than</p> <p>2 one entity were named and there was an admission that</p> <p>3 they had aided and abetted in the wrongful conduct with</p> <p>4 each other?</p> <p>5 MR. SUTTON: Objection. It's compound.</p> <p>6 THE WITNESS: You know, again, it's hard --</p> <p>7 MR. SUTTON: Also foundation. Sorry.</p> <p>8 THE WITNESS: It's hard -- I've never -- I've</p> <p>9 never tried a jury trial, so it's hard for me to say.</p> <p>10 But, you know, now that you mentioned it, one thing I</p> <p>11 remember from my punitive damages days -- which is</p> <p>12 something I had to, unfortunately, think about more</p> <p>13 than most attorneys -- is when you're facing punitive</p> <p>14 damages, sometimes the assets or, you know, dollar</p> <p>15 value of the company can be put up by the plaintiff's</p> <p>16 attorney, and then the jury can take that into account</p> <p>17 when they are assessing punitive damages.</p> <p>18 So from that perspective, it actually can be</p> <p>19 pretty nice to have a case pared down so that you're</p> <p>20 not putting up in front of a jury the assets of, like,</p> <p>21 two companies or three companies. You're just putting</p> <p>22 up, you know, the assets of one.</p> <p>23 MR. HOYT: That's all I have. Thank you.</p> <p>24</p> <p>25</p>
<p style="text-align: right;">Page 82</p> <p>1 Q Did you have any communications with Mr. Fuller,</p> <p>2 Bill Fuller, about your motion to dismiss or the</p> <p>3 defenses that were raised in the proposed amendment?</p> <p>4 A I generally remember that at some point there was a</p> <p>5 conversation with Bill Fuller, maybe even more than</p> <p>6 one, in connection with our defense of Zurich, and I</p> <p>7 think it also had to do with the motion to dismiss,</p> <p>8 but, like, because it's been such a long time, I just</p> <p>9 can't remember when or the specifics of it.</p> <p>10 Q Do you recall him telling you that he felt like those</p> <p>11 defenses lacked merit or had no chance of success?</p> <p>12 A No, I don't remember him saying anything like that. I</p> <p>13 think that would be something that might stick out to</p> <p>14 me, especially coming from, you know, out of state.</p> <p>15 Q Did you -- did Palmer ever tell you -- give you that</p> <p>16 opinion, that he felt like the motion to dismiss or the</p> <p>17 affirmative defenses lacked merit?</p> <p>18 A Again, I don't remember that happening. I think it</p> <p>19 would be something that would stick out to me, again,</p> <p>20 for that similar reason, you know, especially coming as</p> <p>21 an out-of-state attorney.</p> <p>22 Q You were asked about what impact, if any, it would have</p> <p>23 that the wrong Zurich entity was named. Do you recall</p> <p>24 that?</p> <p>25 A I do, yep.</p>	<p style="text-align: right;">Page 84</p> <p>1 FURTHER EXAMINATION</p> <p>2 BY MR. SUTTON:</p> <p>3 Q Paris, I have a couple of follow-ups. I want to start</p> <p>4 where you just stopped.</p> <p>5 In this case, do you know whether the inclusion of</p> <p>6 Zurich North America as a trade name, not a separate</p> <p>7 entity, would have resulted in a larger amount of</p> <p>8 assets being shown to the jury at punitive damages.</p> <p>9 A I don't know one way or the other as I'm sitting here</p> <p>10 right now. Yeah.</p> <p>11 Q And it would be nothing but speculation, from your</p> <p>12 perspective, that that was actually a concern in this</p> <p>13 case at this time, correct?</p> <p>14 A I don't know if I'd use the term "speculation," but I'm</p> <p>15 just sort of listing out, you know, considerations from</p> <p>16 a generalist perspective, you know.</p> <p>17 Q And that's fair. I mean, these are -- you're</p> <p>18 identifying potential problems without linking those</p> <p>19 problems to this specific case, correct?</p> <p>20 MR. HOYT: Object. That mischaracterizes.</p> <p>21 THE WITNESS: Yeah. I mean, I've linked them --</p> <p>22 I've linked general considerations to this specific</p> <p>23 case, but I haven't, like, sat here and said, oh, this</p> <p>24 definitely would have happened or this wouldn't have</p> <p>25 happened or this definitely would have been important</p>